

Airline Insolvency:
The impact on airports and consumers

Avv. Prof. Laura Pierallini

London – Wednesday, October 17, 2018



OVERVIEW ON INSOLVENCY PROCEDURES IN ITALY

BANKRUPTCY WHICH USUALLY CAUSES THE DISRUPTION OF THE BUSINESS ACTIVITY, ALTHOUGH THE COMPETENT COURT MAY DECIDE FOR THE TEMPORARY CONTINUATION OF BUSINESS TO THE BENEFIT OF THE CREDITORS

EXTRAORDINARY ADMINISTRATION PROVIDED FOR LARGE INSOLVENT COMPANIES AND HAVING AS MAIN PURPOSE THE PROTECTION OF THE EMPLOYMENT LEVELS AND THE PRODUCTION ASSETS THROUGH THE CONTINUATION, REESTABLISHMENT OR CONVERSION OF THE BUSINESS (LAW NO. 270/1999 – SO CALLED PRODI BIS LAW - AND LAW NO. 39/2004 – SO CALLED MARZANO LAW - AND SUBSEQUENT AMENDMENTS)

ARRANGEMENT WITH CREDITORS EITHER WITH OR WITHOUT THE CONTINUATION OF BUSINESS. IN CASE OF FAILURE OF THIS PROCEDURE, THE COMPANY CAN BE DECLARED BANKRUPT AND FALL UNDER ONE OF THE PROCEDURES UNDER BANKRUPTCY OR EXTRAORDINARY ADMINISTRATION, DEPENDING ON ITS DIMENSIONS

THE EXTRAORDINARY ADMINISTRATION

THE EXTRAORDINARY ADMINISTRATION UNDER THE SO CALLED "MARZANO LAW" IS AN INSOLVENCY PROCEDURE PROVIDED FOR LARGE INSOLVENT COMPANIES

HAVING MORE THAN 500 EMPLOYEES (OVER THE LAST YEAR)

OVERALL INDEBTEDNESS EQUAL TO, OR HIGHER THAN, EURO 300 MILLION

THE EXTRAORDINARY ADMINISTRATION PROCEDURE OF ALITALIA



**DECREE DATED 2 MAY 2017
MINISTRY FOR THE ECONOMIC
DEVELOPMENT**

ALITALIA

SOCIETÀ AEREA ITALIANA S.P.A.

**ALITALIA IS AN ITALIAN AIRLINE AT THE TIME OF THE FILING FOR INSOLVENCY OWNED BY THE
CONSORTIUM**

COMPAGNIA AEREA ITALIANA - CAI (51% SHARES) AND ETIHAD AIRWAYS (49%)

ALITALIA HAS BEEN IN FINANCIAL DIFFICULTY FOR A NUMBER OF YEARS.

ON 24 APRIL 2017 ALITALIA'S STAFF REJECTED A COST-CUTTING PLAN, WHICH MEANT THAT THE
SHAREHOLDERS DECIDED NOT TO PROVIDE ADDITIONAL FINANCING TO ALITALIA.



**APPOINTED 3
COMMISSIONERS TO LEAD
THE COMPANY
THROUGHOUT THE
PROCEDURE
(THE "MINISTRY DECREE")**

**ADMITTED ALITALIA TO THE EXTRAORDINARY
ADMINISTRATION PROCEDURE
(PURSUANT LAW 39/2004)**



FOLLOWING THE MINISTRY DECREE, ON 11 MAY 2017
THE COURT OF CIVITAVECCHIA
ISSUED THE SO CALLED “DECLARATION OF INSOLVENCY” OF ALITALIA

CREDITORS CANNOT
START INDIVIDUALLY
JUDICIAL ACTIONS
AGAINST THE AIRLINE

ANY ACTIONS PENDING
AT THE TIME OF THE
DECLARATION ARE
INTERRUPTED
(I.E. “AUTOMATIC
STAY”)


**THE MAIN EFFECTS OF
THE SAID DECLARATION
ARE**

THE COMMISSIONERS
TOOK CHARGE OF THE
AIRLINE’S GOING
CONCERN IN ORDER TO
COLLECT ALL
RECEIVABLES, CREDITS
AND PROPERTIES

NO ENFORCEMENT AND
PRECAUTIONARY
MEASURES CAN BE
COMMENCED OR
CONTINUED AGAINST
THE AIRLINE’S ASSETS

THE EXTRAORDINARY ADMINISTRATION PROCEDURE OF ALITALIA

THE MAIN PURPOSE OF THIS PROCEDURE IS TO PRESERVE THE EMPLOYMENT LEVELS BY WAY OF 3 ALTERNATIVE PLANS



THE FINANCIAL
RESTRUCTURING
OF THE COMPANY

THE SALE OF THE
BUSINESS AS A
WHOLE

THE SALE OF THE
ASSETS AND
CONTRACTS PART
BY PART

KEY ELEMENTS UNDER THE ALITALIA DECREE OR AMENDED MARZANO LAW

- ✓ AIRLINE'S BUSINESS CONTINUITY UNDER THE MANAGEMENT OF THE EXTRAORDINARY ADMINISTRATOR;
- ✓ SPECIAL PROVISIONS FOR DEBTOR OFFERING ESSENTIAL PUBLIC SERVICES;
- ✓ EXCEPTION TO ANTITRUST RULES;
- ✓ INTRODUCTION OF A SPECIAL FORM OF COMPOSITION WITH CREDITORS HAVING SIMILARITIES TO US CHAPTER 11 MODEL;
- ✓ AIRLINE ENTITLED TO CONTINUE FLIGHT OPERATIONS AND BUSINESS, INCLUDING COMMERCIAL RELATIONSHIPS WITH SUPPLIERS, TOUR OPERATORS AND TRAVEL AGENTS;
- ✓ DEBTS ACCRUED DURING THE COURSE OF THE PROCEDURE FOR THE CONTINUATION OF BUSINESS TO BE SETTLED AND PAID BY THE AIRLINE;
- ✓ CREDITS ACCRUED BEFORE THE DATE OF APPLICATION TO BE CLAIMED BEFORE THE COMPETENT ITALIAN COURT AND PAID OUT OF THE LIQUIDATION PROCEEDS;
- ✓ PAYMENT OF OLD INDEBTEDNESS TO BE AUTHORISED BY THE COURT AND ONLY IF NECESSARY FOR THE CONTINUATION OF BUSINESS;
- ✓ APPLICATION OF THE PROVISIONS OF THE ITALIAN BANKRUPTCY LAW NOT SUPERSEDED BY THE SPECIAL PROVISIONS OF THE PRODI BIS AND MARZANO LAWS, *INTER ALIA* ARTICLE 67 OF THE ITALIAN BANKRUPTCY LAW (CLAW-BACK ACTIONS).

FROM A COMMERCIAL PERSPECTIVE,
THE CONSEQUENCE OF THE EXTRAORDINARY ADMINISTRATION ON
THE AGREEMENTS ENTERED INTO BY ALITALIA ARE

→ THEY CONTINUE IN FULL FORCE AND EFFECT, BUT THE COMMISSIONERS ARE ENTITLED TO EARLY TERMINATE THE SAME. AFTER THE AUTHORISATION TO IMPLEMENT THE PLAN THE OTHER PARTY ARE ENTITLED TO ASSIGN THE COMMISSIONERS A TERM NOT EXCEEDING 30 DAYS TO TAKE A DECISION AS TO WHETHER CONTINUE OR TERMINATE THE AGREEMENT.

IF THE COMMISSIONERS DO NOT RESPOND THEN THE AGREEMENT(S) ARE DEEMED AS TERMINATED.

- **DEROGATION** THE COMMISSIONERS MAY WITHDRAW FROM THE OUTSTANDING AGREEMENTS, AND THE COUNTERPARTIES CANNOT IMPOSE THE 30 DAYS TERM, UNTIL THE SALE OF ALITALIA WILL BE COMPLETED.
- THE ABOVE DEROGATION HAS BEEN INSERTED IN A PARAGRAPH OF ART. 12 OF A TAX AND FINANCIAL DECREE (NO.148/2017).

→ THE AGREEMENTS STILL IN FORCE AND EFFECT ARE BINDING FOR THE AIRLINE, WHICH IS SO COMMITTED TO REGULARLY PERFORM ITS PAYMENT OBLIGATIONS ACCRUED AFTER THE MINISTRY DECREE (INCLUDING LEASE RENTS AND BILLS FOR MRO SERVICES).

- CREDITS, IF ANY, ACCRUED TOWARDS THE AIRLINE PRIOR TO THE DATE OF THE MINISTRY DECREE, SHALL HAVE TO BE ADMITTED TO THE OVERALL INSOLVENCY LIABILITIES AND, AT A LATER STAGE, WILL BE REPAID ON A "PAR CONDICIO CREDITORUM" BASIS ACCORDING TO THE ARRANGEMENT PREPARED BY THE COMMISSIONERS FOR THE SATISFACTION OF THE CREDITORS.

DUE DILIGENCE PROCESS OF ALITALIA

ON 17 MAY 2017

THE COMMISSIONERS PUBLISHED A CALL FOR THE EXPRESSIONS OF INTEREST



THE COMMISSIONERS HAVE RECEIVED MORE THAN
30 EXPRESSIONS OF INTEREST,
EITHER FOR THE ENTIRE AVIATION BUSINESS OR FOR A PORTION THEREOF
(E.G. SPECIFIC AIRCRAFT, CONTRACTS, SLOTS ETC.)



The data room did not contain sensitive and confidential information that could bring undue advantages to competitors within the aviation sector.

THE COMMISSIONERS HAVE SELECTED **15** ENTITIES ELIGIBLE TO TAKE PART TO THE NEXT PHASE OF THE PROCEDURE

DUE DILIGENCE PROCESS OF ALITALIA

ON 1 AUGUST 2017 THE COMMISSIONERS HAVE ISSUED A CALL FOR THE SUBMISSION OF NON-BINDING OFFERS RELATING TO EITHER:

- (A) THE ENTIRE BUSINESS OF ALITALIA (INCLUDING AVIATION, MAINTENANCE AND HANDLING);
- OR (B) THE AVIATION BUSINESS (INCLUDING MAINTENANCE ACTIVITIES);
- OR (C) THE AIRPORT GROUND HANDLING BUSINESS.

THE CALL HAS ALSO CLARIFIED THAT IN CASE OF A CERTAIN DEGREE OF EQUALITY BETWEEN THE CONDITIONS OFFERED BY THE BIDDERS, THE COMMISSIONERS WOULD PREFER THOSE OFFERS RELATING TO THE ENTIRE BUSINESS OF ALITALIA

IT SEEMS THAT MOST OF THE BIDDERS ARE INTERESTED IN PURCHASING ONLY A PORTION OF THE ALITALIA'S ASSETS (THE AVIATION OR THE HANDLING ACTIVITIES) RATHER THAN THE ENTIRE BUSINESS.

IT ALSO APPEARS THAT THE NUMBER OF BINDING OFFERS THAT THE COMMISSIONERS HAVE CONSIDERED TO BE RELIABLE ARE 7 AND THEY COME, AMONG THE OTHERS, FROM THE LEADING GERMAN CARRIER LUFTHANSA, THE US PRIVATE INVESTMENT FIRM CERBERUS AND AN ITALIAN HANDLING COMPANY BELONGING TO THE DNATA GROUP BASED IN DUBAI.

THE MEANWHILE, BY WAY OF A FISCAL DECREE THE ITALIAN GOVERNMENT HAS EXTENDED THE TERM FOR THE COMPLETION OF THE SALE OF ALITALIA FROM 5 NOVEMBER 2017 TO 30 APRIL 2018 AND BY WAY OF A SECOND DECREE FROM 30 APRIL 2018 TO 31 OCTOBER 2018.

THE ITALIAN GOVERNMENT HAS GRANTED ALITALIA A LOAN FACILITY



The European Commission has opened an investigation. The Commission has concerns that the duration of the loan, extending from May 2017 until at least December 2018, exceeds the maximum duration of six months allowed for a rescue loan under the guidelines.

According to the rules published in the official journal of the EU on 31 July 2014, public aid payable to a company the size of Alitalia, fall into two types

RESCUE AID

RESTRUCTURING AID

"RESCUE AID IS, BY ITS NATURE, A FORM OF URGENT AND TEMPORARY ASSISTANCE, THE MAIN OBJECTIVE OF WHICH IS TO ENABLE A COMPANY IN DIFFICULTY TO BE KEPT ALIVE FOR THE SHORT TIME NEEDED TO PREPARE A RESTRUCTURING OR LIQUIDATION PLAN "(POINT 26 OF THE GUIDELINES).

THE SALE OF THE ASSETS

- THE BIDDERS FOR ALITALIA WHO HAVE SUBMITTED THEIR EXPRESSIONS OF INTEREST ARE INTERESTED IN PURCHASING A PORTION OF THE COMPANY'S ASSETS RATHER THAN THE ENTIRE BUSINESS;
- THE AIRLINE'S SLOTS ARE AMONG THE MOST VALUABLE ASSETS, ALONG WITH CERTAIN TRAFFIC RIGHTS TOWARDS NON EU DESTINATIONS;
- ETIHAD AIRWAYS (MINORITY SHAREHOLDER (49%) IN ALITALIA SAI S.p.A. NOW UNDER EA) PURCHASED SLOTS AT LONDON HEATROW FROM OLD ALITALIA, BASED ON THE HIGH COURT OF JUSTICE INTERPRETATION;
- THE MARKETING OF SLOTS IS NOT POSSIBLE UNDER THE ITALIAN LAWS: THE SLOTS FOLLOW THE WHOLE OR THE RELEVANT PORTION OF THE BUSINESS.

THE IMPACT OF INSOLVENCIES ON PASSENGERS RIGHTS

- ▶ *IN TERMS OF INTERRUPTION OF SERVICES;*
- ▶ *IN TERMS OF COSTS RELATED TO:*
 - ✓ *ORIGINAL FLIGHT(S) (REIMBURSEMENT);*
 - ✓ *REPLACEMENT FLIGHT(S) (FOR REPATRIATION OR FOR REPLACEMENT TRAVEL);*
 - ✓ *NON-REFUNDABLE COMPONENTS (SUCH AS HOTEL OR CAR HIRE DEPOSITS);*
 - ✓ *INFORMATION (COST OF PHONE CALLS TO REBOOK FLIGHTS);*
 - ✓ *CARE (INCLUDING ADDITIONAL ACCOMMODATION).*

TOP 30 AIRLINES OPERATING IN ITALY RANKED ON PASSANGES CARRIED

	Airline	Nationality	No. of passengers carried ⁽¹⁾
1	Ryanair	Ireland	36.272.693
2	Alitalia	Italy	21.765.476
3	Easyjet - Easyjet Switzerland	Great Britain	16.526.021
4	Vueling Airlines	Spain	5.873.506
5	Deutsche Lufthansa	Germany	4.529.777
6	Wizz Air	Hungary	4.307.344
7	British Airways	Great Britain	3.391.785
8	Air France	France	2.784.450
9	Meridiana Fly - Air Italy	Italy	2.474.714
10	Volotea	Spain	2.295.845
11	Emirates	United Arab Emirates	1.936.043
12	Klm Royal Dutch Airlines	Netherlands	1.917.342
13	Blue Air	Romania	1.786.026
14	Turkish Airlines	Turkey	1.552.095
15	Eurowings	Germany	1.532.528
16	Blue Panorama Airlines	Italy	1.443.652
17	Air Berlin	Germany	1.353.084
18	Iberia	Spain	1.333.050
19	Neos	Italy	1.163.808
20	Swiss Air International	Switzerland	1.079.460
21	Aeroflot	Russia	1.068.881
22	Brussels Airlines	Belgium	1.041.499
23	Tap - Air Portugal	Portugal	970.713
24	Air Dolomiti	Italy	912.228
25	Qatar Airways	Qatar	850.455
26	Delta Air Lines	Usa	835.817
27	Basiq Air - Transavia	Netherlands	831.501
28	American Airlines	Usa	830.791
29	German Wings	Germany	775.791
30	Scandinavian Airlines System (Sas)	Sweden	752.297

The number of domestic passengers includes only departure.

** Source: Traffic data ENAC 2017*

THE IMPACT OF INSOLVENCIES ON AIRPORTS' RIGHTS

- ▶ *GENERALLY SPEAKING CREDITS ACCRUED BY AIRPORTS TOWARDS AN AIRLINE ARE UNSECURED (I.E. THEY RANK IN RIGHT AND PRIORITY AT LEAST PARI PASSU WITH THE OTHER UNSECURED INDEBTEDNESS OF THE INSOLVENT AIRLINE);*
- ▶ *PURSUANT TO ARTICLE 802 OF THE ITALIAN NAVIGATION CODE, ENAC IS ENTITLED, ALSO UPON REQUEST OF AIRPORT AUTHORITIES AND/OR ENAV (THE AUTHORITY FOR AIR TRAFFIC CONTROL) TO DENY AUTHORIZATION TO AIRCRAFT TAKING-OFF FROM ITALIAN AIRPORTS AS LONG AS TAXES, DUTIES AND CHARGES ARE OUTSTANDING;*
- ▶ *THE ITALIAN COURTS MAY ORDER THE ATTACHMENT OF ANY ITALIAN OR FOREIGN AIRCRAFT FOR CREDITS SET OUT UNDER ARTICLE 6 OF LAW NO. 324/1976, WHICH PROVIDES A JOINT LIABILITY OF THE OWNER OF THE AIRCRAFT WITH THE OPERATOR FOR THE PAYMENT OF ANY RIGHTS, TAXES, CHARGES AND INTERESTS DUE TO THE AIRPORTS;*
- ▶ *ARTICLE 802 OF THE ITALIAN NAVIGATION CODE AND LAW NO. 324/1976 CANNOT BE ENFORCED AGAINST THE AIRLINE AFTER THE DECLARATION OF INSOLVENCY BY THE COMPETENT COURT.*

THANK YOU!

Avv. Prof. Laura Pierallini
Name Partner at Studio Pierallini
Professor at LUISS University of Rome

